

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C.**

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )  
 )  
Closed Captioning and Video Description )  
of Video Programming )  
 )  
Implementation of Section 305 of the )  
Telecommunications Act of 1996 )  
 )  
Video Programming Accessibility )

MM Docket No. 95-176

To: The Commission

**COMMENTS OF HSN, INC.**

HSN, Inc. ("HSN"), by its attorneys and pursuant to Section 1.415 of the Commission's rules, hereby submits these Comments in response to the Commission's *Notice of Proposed Rule Making* in the above-captioned proceeding. 1/ This *Notice* was issued pursuant to the video programming accessibility provision of the Telecommunications Act of 1996 ("Telecom Act"), 2/ and was based in part on

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1/ *Closed Captioning and Video Description of Video Programming*, MM Docket No. 95-176, FCC 97-4 (rel. Jan. 17, 1997) ("*Notice*").

2/ Pub. L. 104-104, 110 Stat. 56 § 305 (1996). Section 305 added Section 713 to the Communications Act of 1934 and is codified at 47 U.S.C. § 613.

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comments already filed in response to the Commission's *Notice of Inquiry*. 3/ In the *Notice*, the Commission requested comment as to whether electronic retail programming, as well as textual and promotional programming, should be exempted from any closed captioning requirements. 4/ Because HSN's programming, like promotional advertisements, already consistently offers its "principal information in textual form" or visual images, 5/ the Commission should exempt this programming from any general closed captioning requirements.

## I. INTRODUCTION

HSN, through its subsidiary Home Shopping Club, Inc., distributes electronic retailing programming by means of numerous full power and low power television stations and cable systems throughout the country. Electronic retail programming affords an opportunity for viewers to purchase products they want or need without leaving their home. Typically, an electronic retailer will display an offered item for a short period of time 6/ while providing viewers with textual, relevant descriptions about the item. HSN's electronic retail programming includes

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3/ FCC 95-484, 11 FCC Rcd 4912 (1996). The Commission has announced that the comments filed in this proceeding are to be used to satisfy the inquiry mandated by the Telecom Act. *Order*, FCC 96-71 (rel. Feb. 27, 1996).

4/ See *Notice*, ¶¶ 73, 78-79.

5/ *Notice* at ¶ 79.

6/ Although HSN typically features a product for about 10 minutes, some products last as few as two minutes.

two separate services, The Home Shopping Network and America's Jewelry Store, both of which offer new live programming 24 hours a day, 7 days a week.

Unlike other promoters or advertisers, HSN's electronic retail programming always accompanies the display of an item with critical textual information about the item. HSN consistently displays visual text that tells a viewer the item's number, product name, price, and other important features of the item. HSN then supplements its display of the product and the text about the product with audio commentary from various hosts. Having seen and read about the product, a viewer may then decide whether to order the product by following the textually-displayed ordering information that generally remains on the screen. <sup>7/</sup>

HSN submits its individual Comments to emphasize the following facts:

- 1) HSN's programming already presents significant information through visual text;
- 2) the display of additional text during this programming would be both redundant and unfeasible because the display of the product and text about the product generally occupy the entire screen; and
- 3) captioning of this always live programming would also impose significant costs, without obtaining significant benefits, that would hinder HSN's ability to serve its viewers.

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<sup>7/</sup> For photographs that capture representative HSN programming, see Exhibit 1.

**II. HSN'S PROGRAMMING SHOULD BE EXEMPT FROM CLOSED CAPTIONING REQUIREMENTS ACCORDING TO THE COMMISSION'S INTERPRETATION OF THE STATUTE.**

The Commission has stated that it will not subject programming to closed captioning requirements if the burdens on the programming from the captioning requirement "outweigh[] the benefits to be derived from captioning" that programming. 8/ In the case of HSN, the burdens imposed by captioning requirements far exceed the benefits of those requirements.

**A. HSN'S CURRENT PROGRAMMING ALREADY PROVIDES SUFFICIENT VISUAL INFORMATION TO VIEWERS WITHOUT THE DISRUPTING EFFECT OF MANDATORY CAPTIONS.**

Unlike other types of programming, HSN's programming already heavily relies on textual information to convey that which is being spoken. Therefore, HSN's viewers will not significantly benefit from additional captioning. In fact, it would be contrary to HSN's interest for it not to include, visually, the basic facts necessary to request a displayed item such that its programming can reach the hearing impaired audience. 9/ Although particular programming varies depending on the product shown, HSN routinely displays the information about a

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8/ Notice at ¶ 6.

9/ For a number of years, HSN has operated a TT (formerly known as TDD, see 47 C.F.R. § 64.601(8)) service for its hearing impaired viewers. The success of this service -- HSN estimates that the service receives an average of three calls per day -- demonstrates HSN's success in conveying product information to the hearing impaired through its current presentation of visual text and images.

product as text surrounding that product. The accompanying text typically shows the item number of the product, the name or a short description of the product, the retail value of the product, the offered price of the product, the availability of the product, financial alternatives for payment of the product, and the phone number to call to order the product. Like promotional advertising, which the Commission has already proposed to exempt from captioning requirements, HSN's programming thus already conveys its "principal information" to a viewer "in textual [or other visual] form." 10/

Moreover, unlike captioning promotional advertising, captioning the spoken commentary from the hosts of an electronic retail broadcast may well hinder a viewer -- hearing impaired or not -- from gleaning important information regarding the item displayed. Such captions may distract a viewer from the more critical visual presentation of the product, and the product's relevant information, already displayed on the screen. The significant risk of inaccurate captions -- due to the fact that *all* programming is live -- only adds to this concern. Because HSN airs only live programming, which displays many products relatively quickly, all captioning would need to be performed in real time. As even the most expensive real time captioning simply will not be always precise, 11/ errors in captioning that

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10/ Notice at ¶ 79. See also *id.* at ¶ 77 ("We also note that in some advertising a portion of the information is provided textually or graphically and may serve as an alternative closed captioning.") Like previews in promotional advertising, the live commentary during electronic retail enhances the presentation of an item but does not add facts critical for a viewer wishing to obtain that item.

11/ See, e.g., Notice at ¶¶ 113-14.

conflict with price or other information already displayed on the screen may result in confusion to all viewers. Because this confusion would again impair the viewer's ability to comprehend relevant information, HSN seeks to avoid it in favor of other requirements that would serve the same purpose without creating confusion.

**B. HSN'S PROGRAMMING FORMAT ALSO DOES NOT HAVE SUFFICIENT SPACE TO SHOW CLOSED CAPTIONS WITHOUT OBSTRUCTING THE CRITICAL INFORMATION ALREADY ON THE SCREEN.**

A closed captioning requirement on HSN's programming would be practically unfeasible because it would obscure important information currently made available for *all* viewers. If captions are to benefit the hearing impaired, they cannot conceal information that is currently available to all viewers. Unlike most other types of programming, HSN commonly uses the *entire* available screen to display an item (with the textual information about an item.) <sup>12/</sup> HSN also frequently displays text "crawling" across both the top and bottom of the screen in order to provide even more information to the viewer. Because no free space exists on either edge of the typical HSN screen, any mandatory captioning would overlap (or result in textual overload for) some aspect of the item's presentation. As the displayed textual information generally is more important to a viewer than spoken commentary during HSN's programming, any "captioning overlap" could deny

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<sup>12/</sup> See Exhibit 1.

viewers critical textual information or other visual images that would otherwise be readily seen.

**C. THE COSTS OF CLOSED CAPTIONING HSN'S  
PROGRAMMING CONFIRM THAT THE COMMISSION  
SHOULD EXEMPT HSN FROM GENERAL CAPTIONING  
REQUIREMENTS.**

Additional captioning of HSN's always live programming would also impose significant costs that would have to be passed on to individual consumers. As the Commission is already aware, the availability of real time captioning resources is terribly limited, with perhaps only 100 such captioners available nationwide. 13/ This scarcity has already resulted in high prices for real time captioners. 14/ Even if a sudden imposition of real-time captioning requirements did not cause significant unintended consequences outside the market, such as an undesired impact on available programming, a universal mandate for closed captions would likely cause these rates only to increase, at least until more individuals could develop the stenographic skills required for acceptably accurate real time captioning. 15/

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13/ See Notice at ¶¶ 24, 108.

14/ The Commission has already recognized that the current "cost of closed captioning can be expensive, especially for high quality captioning of live programming." See Notice at ¶ 115. Of course, the current prices may well be bargains as compared to the rates that would likely follow a promulgation of closed captioning requirements.

15/ See Notice at ¶ 113.

In such a market, HSN would suffer significant competitive disadvantages. The unique nature of entirely live, electronic retail programming, like HSN's, demands the use of accurate real-time captioners. (As noted, electronic retail captioning requires absolute accuracy lest a viewer be confused by captions that conflict with any of the information already appearing on the screen.) The high quality captioners that HSN would seek in order to minimize the confusion of its viewers would cause its costs of full-fledged captioning to be very high indeed. In light of these electronic retail realities, the costs involved in captioning HSN's programming would prove "economically burdensome." 16/

Moreover, unlike most other forms of programming, including promotional advertising, HSN *never* rebroadcasts its entirely live programming. It cannot. Its products are continually updated and constantly changing. Unlike programmers or advertisers who may produce infomercials or commercials with high "repeat value," HSN will have no opportunity to spread the substantial one-time cost of captioning over several viewings. Imposition of this significant cost onto HSN would diminish the ability of electronic retail to compete with other forms of retail and may limit HSN's ability to make more products easily accessible to its viewers, both hearing impaired and not.

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16/ Cf. Notice at ¶ 115 (indicating that a need for higher quality closed captioning is more likely to necessitate an exemption from captioning requirements.)



### **III. RECOMMENDATIONS**

Based on the significant burdens faced by electronic retailers, HSN requests that the Commission:

- Require that electronic retailers provide, as visual text, product, price, and payment information a substantial percentage of the time.
- Exempt electronic retailers from general captioning requirements.

### **IV. CONCLUSION**

Because the existing format of HSN's programming already consistently provides the relevant information to viewers through visual text or images, the significant possibility that captioning would cause confusion to viewers, the technical difficulties presented by any captioning scheme in light of HSN's programming format, and the substantial economic burden of captioning to HSN, HSN's programming should be exempt from any general closed captioning requirements. HSN's programming, which is never rebroadcast and always live, is even less suited for closed captioning than other forms of programming, such as promotional advertising, that the Commission has already recognized as being unsuitable for closed captioning mandates. To the extent the Commission wishes to insure electronic retailers display "basic" information to viewers, it may want to consider "alternatives" other than such overly burdensome 24-hour captioning. 17/

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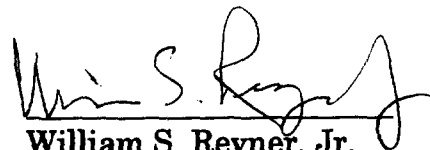
17/ Cf. Notice at ¶ 84.

Otherwise, the prudent course is for the Commission to exempt electronic retailers, such as HSN, from any captioning requirements.

Respectfully submitted,

HSN, INC.

By:



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Its Attorneys

February 28, 1997

**EXHIBIT 1**

**NO INTEREST  
NO PAYMENTS  
Until March 1997**

**Item 631-442  
Ivana Animal  
Trim Jacket  
Tan or Denim**

**Size S-3x  
21½" Length**

**Your choice  
\$90.00**

**2 Flexpays of  
\$45.00**

**EAH \$6.25**

**1-800-284-3100**

**1<sup>st</sup> Home  
Shopping**



**new**

Item 621-622

**Cervelle  
Crushed Velvet  
Leggings**

**Black, Blue or  
Cranberry / 8-3x**

Retail value

**\$39.00**

Our price

**\$18.85**

SAH \$4.95

**1-800-284-8100**

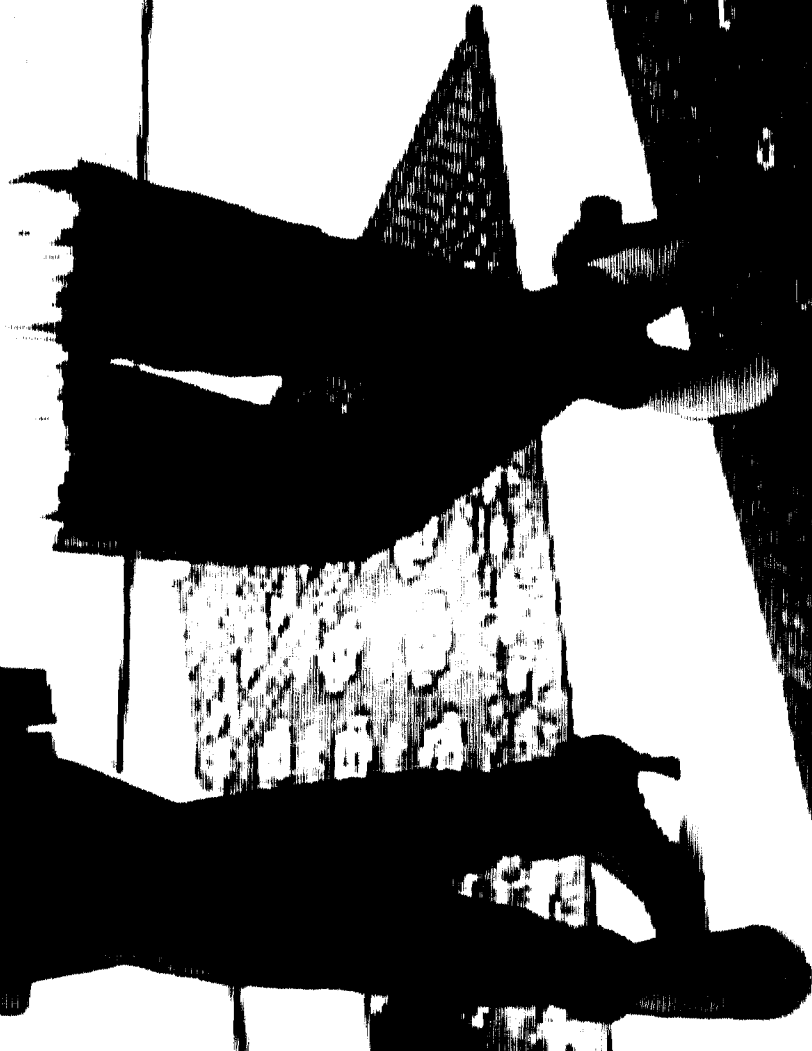
**5378**

Sold Today

**:01**

Time

**Mr Home  
Shopping**



**clock  
the  
halls**

**Item 632-513**

**Fuji Smart  
Shot Deluxe  
Holiday Outfit**

**35mm Camera  
w/3 Rolls of Film**

**Retail value  
\$108.28**

**Our price  
\$39.85**

**SBH \$4.95**

**1-800-284-3100**

**2722**

**Sold Today**

**:02**

**Time**

**The Home  
Shopping  
NETWORK**



TOBY BRIDGES  
**NO** MORE  
GOOD LUCK  
WITH CHAIRS

Item 612-701

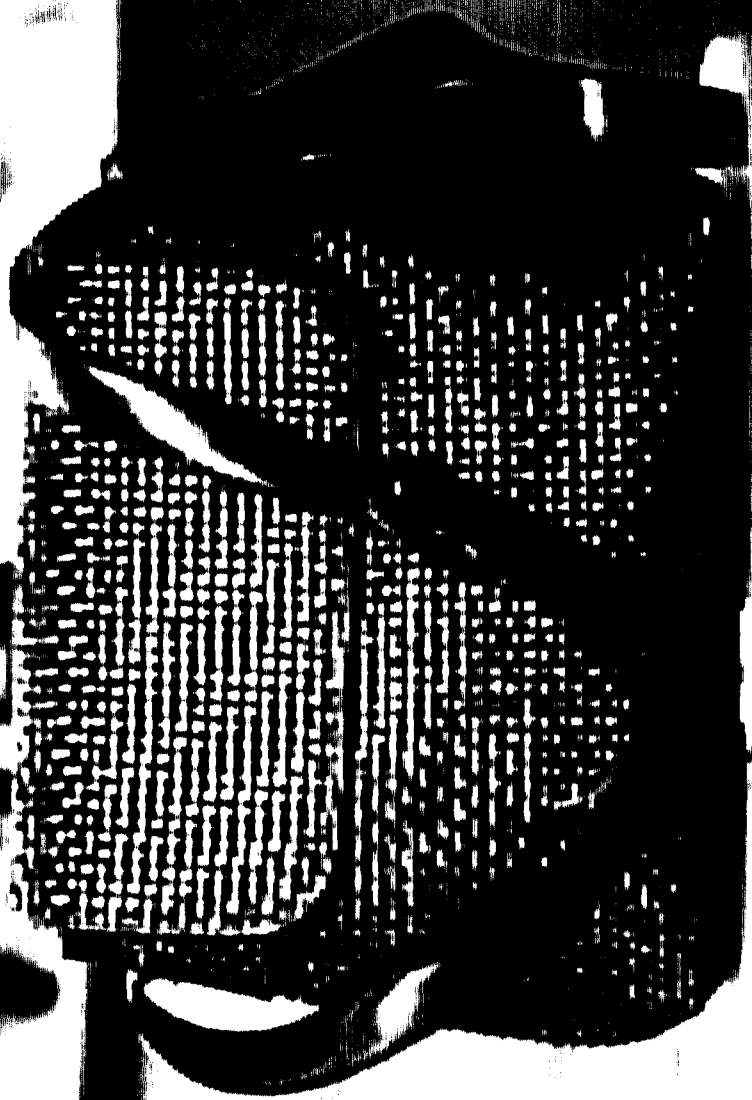
**Americana  
Woven Leather  
Hampton**

**Sold  
Out**

S&H 57.50

**1-800-284-3100**

**Mr. Home  
Shopping**




**DECLARATION OF ELIZABETH A. WATERS**

**ELIZABETH A. WATERS**, of full age, declares as follows:

1. I serve as Senior Counsel of the Home Shopping Network, the direct subsidiary of HSN, Inc.

2. I have read and examined the foregoing Comments and the exhibits attached therein, and the facts stated therein are true and correct to the best of my knowledge and belief.

  
Elizabeth A. Waters  
Senior Counsel  
Home Shopping Network

Dated: February 27 1997